

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Omega Foundation Services, Inc.,)	Case No.: _____
)	
Plaintiff,)	
)	COMPLAINT
v.)	
)	
Endurance Assurance Corporation,)	
)	
Defendants.)	
_____)	

COMES NOW Plaintiff, Omega Foundation Services, Inc. (“Omega”) by and through its undersigned counsel, and hereby asserts causes of action against the Defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Omega is a corporation organized and existing under the law of the State of Louisiana with its principal place of business in East Feliciana Parish, Louisiana.

2. Upon information and belief, Endurance Assurance Corporation (“Endurance”) is a corporation organized and existing under the laws of the State of New York. At all times relevant hereto, Endurance was doing business as a surety company in the State of South Carolina and acting as a license surety for its principal, Expert Maintenance & Construction Services, LLC.

3. Endurance issued a payment bond bearing Bond No. EACX115000039 naming themselves as Surety and Expert Maintenance & Construction Services, LLC (“Expert Maintenance”) as Principal in the amount of seven million seven hundred ninety-one thousand nine hundred twenty-eight and 27/100 dollars (\$7,791,928.27) for the project at issue. A true and accurate copy of the bond is attached as **Exhibit A**.

4. This action arises and this Court has jurisdiction over this action, pursuant to the Miller Act, 40 U.S.C. §§ 3131, et seq. and 28 U.S.C. §§ 1332.

5. Venue is proper in this Court because the project at issue is located in the McEntire Joint Base in Richland County, South Carolina.

FACTUAL ALLEGATIONS

6. Expert Maintenance entered into a contract (“Prime Contract”) with the United States of America in which Expert Maintenance was to provide labor, materials, and equipment to perform renovation at the McEntire Joint Base in Richland, South Carolina for the Repair and Addition to Fire Station, Building 62 (the “Project”) for Project No. W912QG19C006, PTSE 122022, and 139022.

7. Pursuant to the terms of the Prime Contract, Expert Maintenance, as principal, and Endurance, as surety, executed and delivered to the United States of America their bond conditioned, as required by the Miller Act, for the protection of all persons supplying labor and materials in the execution of the work provided for in the Contract.

8. On July 2, 2020, Omega entered into a contract with Expert Maintenance (the “Subcontract”), amended by Change Orders 001 through 005, wherein Omega agreed to furnish certain labor and equipment required for the construction project under the principal contract between Expert Maintenance and the United States of America. A copy of this Subcontract is attached as **Exhibit B**.

9. Omega then performed its obligations under the Subcontract by furnishing labor, materials, and equipment as outlined in the scope of work on the Subcontract. The agreed upon value for the work totaled one million one hundred thirty-two thousand and 00/100 dollars (\$1,132,000.00). Expert Maintenance has paid \$610,197.83. There remains due \$521,802.17 to Omega.

10. Omega completed its scope of work under the Subcontract. Despite its demands for payment, Omega has not been paid in full for its work performed on the Project.

11. For its completed scope of work, Omega is still owed \$521,802.17 for work completed on the Project.

FOR A FIRST CAUSE OF ACTION
(Labor and Material Payment Bond)

12. The allegations of Paragraphs 1 – 11 above are incorporated herein by reference as if restated verbatim herein.

13. Expert Maintenance and Endurance executed a payment bond (the “Bond”), thereby guaranteeing the payment of all lawful claims of subcontractors providing labor, materials, and /or equipment to Expert Maintenance with its performance on the Project.

14. The labor, materials, and equipment provided by Omega were covered by and fall within the meaning of such terms contained in the Bond.

15. Omega is an intended beneficiary and a proper claimant under the Bond.

16. Expert Maintenance has failed to pay Omega despite Omega’s repeated demands for payment.

17. Endurance has failed to make prompt payment to Omega in violation of the payment obligations of the Bond.

18. Omega has been damaged by Expert Maintenance’s breach of contract.

19. Omega has fulfilled all conditions of the Bond necessary for Omega to recover fully under the Subcontract.

20. As Expert Maintenances’ payment bond surety, Endurance is liable to Omega for the amounts owed by Expert Maintenance for Omega’s work on the Project. As such, Endurance

is now liable to Omega in the amount in excess of \$521,802.17 plus interest thereon, attorneys' fees and costs as allowed by law.

WHEREFORE, Plaintiff prays for the following relief:

1. For a non-jury trial;
2. For judgment on its cause of action against the Defendant;
3. For pre-judgment interest or statutory interest;
4. Attorneys' fees and costs;
5. Costs of the Court; and
6. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/Mason A. Goldsmith, Jr.
Mason A. Goldsmith, Jr. (Fed. ID No. 7029)
Katherine M. Sieber (Fed. ID No. 13291)
Elmore Goldsmith Kelley & deHoll, P.A.
19 Blair Street (29607)
Post Office Box 1887
Greenville, South Carolina 29602
Telephone: (864) 255-9500
Facsimile: (864) 255-9505
agoldsmith@elmoregoldsmith.com
ksieber@elmoregoldsmith.com
*Counsel for Omega Foundation Services,
Inc.*

April 7, 2023
Greenville, South Carolina